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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/507,262	02/18/2000	Jay S. Walker	17200-020CT3	8998
54205 7590 08/17/2007 CHADBOURNE & PARKE LLP 30 ROCKEFELER PLAZA NEW YORK, NY 10112			EXAMINER ZURITA, JAMES H	
			ART UNIT 3625	PAPER NUMBER
			MAIL DATE 08/17/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/507,262

Applicant(s)

WALKER ET AL.

Examiner

James H. Zurita

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 98-111, 113-125, 127-137, 139-150, 152-163, 165, 167-177, 179 and 181-182 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Disposition of Claims: Claims pending in the application are 98-111,113-125,127-137,139-150,152-163,165,167-177,179,181 and 182.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 14 May 2007 has been entered.

### ***Response to Amendment***

Applicant cancelled claims 164 and 178. No claims are amended.

Claims 98-111, 113-125, 127-137, 139-150, 152-163, 165, 167-177, 179 and 181-182 are pending and will be examined.

### ***Claim Rejections - 35 USC § 112***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 98, 113, 127, 139, 152 and 168 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant does not explain how a payment is guaranteed. For purposes of Examination, the term will be given its broadest reasonable interpretation to include

payments made with a payment card issued to a person with a satisfactory credit rating for making retail purchases, such as a credit card.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 98-111, 113-125, 127-137, 139-150, 152-163, 165, 167-177, 179 and 181-182 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charles **Boisseau**, 'Netting cheap fares/Some are taking cyberspace route; [3 STAR Edition], Houston Chronicle (pre-1997 Fulltext), Houston, Tex.: Aug 16, 1996, 4 pages, downloaded from ProQuest Direct on the Internet on 10 April 2006 in view of Chung (US 5,644,721), filed on 30 August 1995 and issued 1 July 1997.

**As per claim 98**, drawn to a system, **Boisseau** discloses systems and methods for using a computer to process the sale of travel services. **Boisseau** discloses:

**Server(s)** providing **web** page(s) accessible by customers. See, for example, references to an airline's site on the World Wide Web, page 2, paragraph 11, "Airlines some time ago discovered that the Internet...Airlines...use their sites on the World Wide Web to provide thousands of pages..."

**Storage device(s)** storing program(s), including programs that provide travel information to customers, as in page 2, paragraph 2, "The latest wrinkle..."

**Processor(s)** (inherent in computers) in communication with the storage device.

**Boisseau** discloses that processors obtain stored flight and seat inventory information and display the information to customers using server(s). The processors also:

- **receive** conditional purchase offer(s) including an offer price from a customer utilizing a **web** page for purchasing travel services. See, for example, references to submitting a bid for travel services such as airline seats, as in Abstract, "The airline received 14,760 bids..."
- **receive a payment identifier** specifying a financial account for use [ "...customers pay with a credit card..." ] in providing guaranteed payment [in that payments are charged to a customer's credit card] for said travel services if said conditional purchase offer is accepted;
- **comparing** the conditional purchase offer with
  - seller inventory (see, for example, references to seats and selling inventory that would otherwise go empty, such as first-class seats, "An often heard analogy...On average, nearly two-thirds of an airline's seats go empty...") and
  - pricing information (see Abstract, for example, for references to full price for first class seats, \$475 paid + \$3700 saved = \$4175 total )
  - stored on a central reservation system (see references to American Airlines reservations and to providing flight information. The information is stored at central reservations systems)
  - to determine if said conditional purchase offer is acceptable (see, for example, Abstract, and references winning bidder).

- **Accept** said conditional purchase offer on behalf of the seller. See, for example, references to winning bidder, as in the Abstract.
- **Notify** the customer of acceptance of said conditional purchase offer. See, for example, references to posting and winning bids, as in Abstract.

**As per claim 98**, Boisseau **does not** specifically disclose common back office procedures such as creating a passenger name record and transmitting the PNR to a CRS. Chung discloses creating a passenger name record; See, for example, at least Col. 10, lines 17-23. Chung also discloses transmitting a PNR to a CRS. See, for example, at least Col. 10, lines 29-43.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Boisseau and Cheung to disclose creating a passenger name record, Transmitting a PNR to a CRS.

One of ordinary skill in the art at the time the invention was made would have been motivated to combine Boisseau and Cheung to disclose creating a passenger name record, Transmitting a PNR to a CRS for the obvious reason that central reservations systems may be used to track inventory on travel services such as flights.

**As per claim 99**, **Boisseau** discloses accessing information on CRS for each seller in a predefined sequence. See, for example, page 5, first paragraph, "...listing the latest specials on fares to selected markets for trips ..."

**As per claim 100**, Boisseau **does not** specifically disclose that predefined sequence is based upon the historical acceptance rate of each seller. Cheung discloses historical tracking of seller acceptances, and providing the information for

future presentation and selection. See, for example, Col. 1, line 40-50. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Boisseau and Chung to disclose that predefined sequence is based upon the historical acceptance rate of each seller. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Boisseau and Chung to disclose that predefined sequence is based upon the historical acceptance rate of each seller for the obvious reason that in this way, a company may analyze its need and make the information available to its accounting systems.

**As per claim 101, *Boisseau*** discloses that predefined sequence is based upon seller-negotiated priorities. See, for example, page 3,

...broader trend sweeping the airline industry to lower costs through various forms of electronic ticket sales and distribution...The airlines' new distribution systems for the first time will offer the opportunity to sell its very perishable seat product...

**As per claim 102, Boisseau *does not*** specifically disclose that a predefined sequence is based upon the commission rates paid by sellers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Boisseau to disclose that a predefined sequence is based upon the commission rates paid by sellers. One of ordinary skill in the art at the time the invention was made would have been motivated to extend Boisseau to disclose that a predefined sequence is based upon the commission rates paid by sellers for the obvious reason that as sellers try to cut distribution costs, companies such as travel agencies would wish to know which sellers pay higher commission rates. Entities such as agencies would wish to get more money by offering seats on the airlines that pay them more.



**As per claim 103**, Boisseau **does not** specifically disclose that a **CPO** [a bid] includes an expiration date. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Boisseau to disclose that a bid includes an expiration date, such as the date and time of departure of a flight. One of ordinary skill in the art at the time the invention was made would have been motivated to extend Boisseau to disclose that a bid includes an expiration date, such as the date and time of departure of a flight for the obvious reason that a bidder may wish to apply his money to alternate plans for a particular weekend, perhaps by putting a bid in for a different location.

**As per claim 104**, Boisseau discloses that seller inventory and pricing information includes seller-defined rules. See, for example, rules such as round trips to Houston for \$129.price; "...deals are heavily restricted..."

**As per claim 105**, Boisseau discloses that a customer accesses **web** page(s) [...sites on the World Wide Web...] Boisseau **does not** specifically disclose the use of a **web** browser for such access. Official Notice is taken that it is old and well known to access web pages with browsers. It would have been within the skill of one of ordinary skill in the art at the time the invention was made to access web pages using web browsers. One of ordinary skill in the art at the time the invention was made would have been motivated to use a web browser to access web pages for the obvious reason that permit a user to view documents on the World Wide Web.

**As per claim 106**, Boisseau **does not** specifically disclose that a customer accesses **web** page which displays an electronic form containing a number of blanks to

be filled out by the customer, the blanks representing conditions of the **CPO**. Official Notice is taken that documents on the World Wide Web, disclosed by Boisseau, are structured with format codes using HTML, whose basic set of features include interactive forms that include blanks to be filled out by customers. It would have been obvious to one of ordinary skill at the time the invention was made to include blank fields representing conditions of a CPO. One of ordinary skill in the art at the time the invention was made would have been motivated to include blank fields representing conditions of a CPO for the obvious reason that the blanks permit a customer to enter information in prescribed formats, thereby producing an enhanced shopping experience.

**As per claim 107**, Boisseau **does not** specifically disclose that the financial account is a debit account. Official Notice is taken that the use of debit accounts is notoriously well known. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Boisseau and general knowledge to disclose that a financial account is a debit account. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Boisseau and general knowledge to disclose that a financial account is a debit account for the obvious reason that some customers may prefer to use debit accounts.

**As per claim 108**, Boisseau discloses that financial account is a credit account ["...customers pay with a credit card..."]

**As per claim 109**, Boisseau **does not** specifically disclose that processor is further operative to pre-authorize offer price of **CPO** with a financial clearinghouse. Official Notice is taken that it was well known to pre-authorize/validate proposed credit

card payments with a financial clearinghouse. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Boisseau with knowledge of one of ordinary skill in the art at the time the invention was made to disclose that a processor is further operative to pre-authorize an offer price of **CPO** with a financial clearinghouse. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Boisseau with knowledge of one of ordinary skill in the art at the time the invention was made to disclose pre-authorizing/validating an offer price of **CPO** [a bid] with a financial clearinghouse for the obvious reason that it's important to verify that a customer has sufficient funds available from a pre-approved credit line.

**As per claim 110** Boisseau discloses that goods or services includes at least one of an airline ticket, an automobile, insurance, computer equipment and a hotel accommodation. See references to airline seats, as in Abstract.

**As per claim 111**, Boisseau **does not** specifically disclose that processor is further operative with program to obtain pre-authorization to charge financial account for travel services prior to consideration of the **CPO**.

**Claim 113 is rejected on the same grounds as claim 98.**

Claim 114 is rejected on the same grounds as claim 99.

Claim 115 is rejected on the same grounds as claim 100.

Claim 116 is rejected on the same grounds as claim 101.

Claim 117 is rejected on the same grounds as claim 102.

Claim 118 is rejected on the same grounds as Claim 103.

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Claim 119 is rejected on the same grounds as claim 104.

Claim 120 is rejected on the same grounds as claim 105.

Claim 121 is rejected on the same grounds as claim 106.

Claim 122 is rejected on the same grounds as claim 107.

Claim 123 is rejected on the same grounds as claim 108.

Claim 124 is rejected on the same grounds as claim 109.

Claim 125 is rejected on the same grounds as claim 111.

**Claim 127 is rejected on the same grounds as claim 98.**

Claim 128 is rejected on the same grounds as claim 99.

Claim 129 is rejected on the same grounds as claim 100.

Claim 130 is rejected on the same grounds as claim 101.

Claim 131 is rejected on the same grounds as claim 102.

Claim 132 is rejected on the same grounds as Claim 103.

Claim 133 is rejected on the same grounds as claim 104.

Claim 134 is rejected on the same grounds as claim 107.

Claim 135 is rejected on the same grounds as claim 108.

Claim 136 is rejected on the same grounds as claim 109.

Claim 137 is rejected on the same grounds as claim 111.

**Claim 139 is rejected on the same grounds as claim 98.**

Claim 140 is rejected on the same grounds as claim 99.

Claim 141 is rejected on the same grounds as claim 100.

Claim 142 is rejected on the same grounds as claim 101.

Claim 143 is rejected on the same grounds as claim 102.

Claim 144 is rejected on the same grounds as Claim 103.

Claim 145 is rejected on the same grounds as claim 104.

Claim 146 is rejected on the same grounds as claim 107.

Claim 147 is rejected on the same grounds as claim 108.

Claim 148 is rejected on the same grounds as claim 109.

Claim 149 is rejected on the same grounds as claim 110.

Claim 150 is rejected on the same grounds as claim 111.

***Claim 152 is rejected on the same grounds as claim 98.***

Claim 153 is rejected on the same grounds as claim 99.

Claim 154 is rejected on the same grounds as claim 100.

Claim 155 is rejected on the same grounds as claim 101.

Claim 156 is rejected on the same grounds as claim 102.

Claim 157 is rejected on the same grounds as Claim 103.

Claim 158 is rejected on the same grounds as claim 104.

Claim 159 is rejected on the same grounds as claim 105.

Claim 160 is rejected on the same grounds as claim 106.

Claim 161 is rejected on the same grounds as claim 107.

Claim 162 is rejected on the same grounds as claim 108.

Claim 163 is rejected on the same grounds as claim 109.

Claim 165 is rejected on the same grounds as claim 111.

Claim 167 is rejected on the same grounds as claim 149.

**Claim 168 is rejected on the same grounds as claim 98.**

Claim 169 is rejected on the same grounds as claim 153.

Claim 170 is rejected on the same grounds as claim 100.

Claim 171 is rejected on the same grounds as claim 101.

Claim 172 is rejected on the same grounds as claim 102.

Claim 173 is rejected on the same grounds as claim 103.

Claim 174 is rejected on the same grounds as claim 104.

Claim 175 is rejected on the same grounds as claim 107.

Claim 176 is rejected on the same grounds as claim 108.

Claim 177 is rejected on the same grounds as claim 163.

Claim 179 is rejected on the same grounds as claim 111.

Claim 181 is rejected on the same grounds as claim 149.

### ***Response to Arguments***

Applicant's arguments filed 23 May 2007 have been fully considered but they are not persuasive.

Applicant argues

Claims 98, 113, 127, 139, 152, 164, 168 and 178 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. More specifically, the Examiner asserts, "Applicant does not explain how a payment is guaranteed." (See, Office Action, page 4, ¶ 5). Applicants respectfully submit that the meaning of "guaranteed" is clear. This is evidenced by the fact that there have been three previous office actions issued by the Patent Office, none of which have indicated that the term was unclear.

In response, the Office prohibits the Examiner from expressing an opinion concerning an issued patent. 35 USC 282. Further, the Examiner gives full faith and

credit to searches and action of previous Examiners in the issued application and in the instant application.

Applicant argues that the Examiner has not established a prima facie case of obviousness. The Examiner respectfully disagrees. The Examiner has applied the Graham rules to reject applicant's claims.

- (A) the claimed invention has been considered as a whole.
- (B) Boisseau and Chung have been considered as a whole and suggest the desirability and thus the obviousness of making the combination;
- (C) Boisseau and Chung have been viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) There is a reasonable expectation of success.

Applicant appears to argue that Boisseau and Chung are nonanalogous art:

Applicants submit that an auction for a seat or a fare is not analogous to the claimed system. A bid in an auction is simply not a CPO. Moreover, Boisseau does not discuss a comparison of any CPO (or for that matter, even a bid) with seller inventory or pricing information stored on a central reservation system. As in USAir's E-Saver example, the seller picks a particular specific seat or fare which then may be offered for sale to the highest bidder. Accordingly, Boisseau's auctions do not disclose, teach or suggest any comparison of a CPO with a seller's inventory to determine whether the CPO is acceptable, as claimed.

In response, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). Boisseau discloses selling excess seats that might go unsold and is directly related to applicant's claimed invention.

Applicant purports to traverse the Examiner's Official Notice:

...Applicants maintain the position that because a prima facie case of obviousness has not been established during prosecution, Applicants have not substantively addressed the various instances of alleged Official Notice, particularly as to various dependent claims. Applicants maintain the position that there have been no admissions regarding the alleged admitted prior art. Applicants also submit the references cited in the pending Office Action fail to establish a prima facie case of obviousness. As such, Applicants traverse the Examiner's various instances of alleged official notice; and request documentary evidence in support of the Examiner's position, in accordance with MPEP 2144.04(C).

A "traverse" is a denial of an opposing party's allegations of fact.<sup>1</sup>

Applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made.

Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 706.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art. In view of

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<sup>1</sup> Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."



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applicant's failure to adequately traverse official notice, the following are admitted prior art::

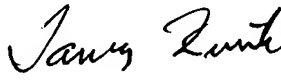
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Zurita whose telephone number is 571-272-6766. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**James Zurita**  
**Primary Examiner**  
**Art Unit 3625**  
2 August 2007

  
**JAMES ZURITA**  
**PRIMARY EXAMINER**